THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.14969 OF 2006

Dated: 24th NOVEMBER, 2006.

Between :

Maganti Srinivas Bhaskar Kumar .. Petitioner

And

UTI Bank Limited .. Respondent

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.14969 OF 2006

ORDER :

This writ petition is filed seeking a Mandamus declaring the action of the respondent Bank in proceeding under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as arbitrary and illegal.

It is not in dispute that the petitioner availed certain credit facilities from the respondent Bank. On 5-10-2005 the respondent issued a Demand Notice under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'). Having received the same, the petitioner claims to have made a representation on 19-12-2005 raising objections to the recovery sought to be made by the respondent Bank on various grounds including that the loan account cannot be classified as NPA. Subsequently, the respondent issued the possession notice dated 5-6-2006 taking possession of the secured asset under Section 13 (4) of the Act. Aggrieved by the same, this writ petition has been filed contending inter alia that the impugned possession notice which was issued without considering his representation dated 19-12-2003 in terms of sub-section (3A) of Section 13 of the Act is arbitrary and illegal.

In the counter-affidavit filed on behalf of the respondent Bank, the plea of the petitioner that he made a representation raising objections to the recovery sought to be made invoking the provisions of the Act has been denied and it is stated that as a matter of fact by letter dated

20-12-2005 the petitioner informed the respondent Bank that necessary steps are being taken for repayment of the amount due at the earliest.

I have heard the learned Counsel for both the parties and perused the record relating to the petitioner's loan account placed before this Court by the learned Counsel for the respondent.

The record discloses that after the notice under Section 13 (2) of the Act was issued on 5-10-2005 the petitioner addressed only one letter dated 20-12-2005 which runs as under :

> *"Due to Financier's brother death, all the delay has happened. To- day, they have called my brother Mr. Avadhani to Trivendrum (already he is Chennai) and they are completing formalities and releasing the funds of Rs.60 lakhs on or before 27-12-2005 without fail.*
>
> *The undersigned also proceeding to Trivendrum to speed up the matter.*
>
> *Kindly oblige us and this is request from our end."*

It is true that under Section 13 (3A) of the Act on receipt of notice under Section 13 (2) of the Act, the petitioner is entitled to make a representation raising the objections if any, in which event the secured creditor shall consider such objections and communicate within one week the reasons for non-acceptance of the representation/objections to the borrower.

However, as noted above, the petitioner did not raise any objections with regard to his liability but on the other hand sought time for repayment.

It is also relevant to note that on receipt of notice under sub-section (2) of Section 13 of the Act the borrower has to discharge the liabilities to the secured creditor within 60 days from the date of notice. Thus, as a matter of fact, the objections, if any, can be raised by the petitioner within 60 days from the date of receipt of the notice under Section 13 (2) of the Act. In the case on hand, admittedly, Section 13 (2) notice was received by the petitioner on 15-10-2005. Even if the

petitioner's plea that he made a representation on 19-12-2005 raising objections to the proposed recovery is accepted, it was beyond the period specified under sub-section (2) of Section 13 of the Act.

In the circumstances, I do not find any substance in the contention of the petitioner that the possession notice issued under Section 13 (4) of the Act is not in accordance with sub-section (3A) of Section 13 of the Act.

At any rate, once a notice issued under Section 13 (4) of the Act, if the petitioner is aggrieved it is always open to him to make an application as provided under Section 17 of the Securitisation Act before the Tribunal having jurisdiction for redressal of his grievance.

In the light of the said alternative efficacious remedy available under the statute, the petitioner cannot straightaway maintain this writ petition.

Accordingly, the Writ Petition is dismissed. No costs. However, this shall not preclude the petitioner to work out the alternative remedy, if so advised.

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G. ROHINI, J.

Dt. 24-11-2006

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